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TAGS: [UNSC](#) [PGOV](#) [PREL](#) [PTER](#) [KCRM](#) [SY](#) [LE](#)
SUBJECT: SYG CONVENES P-5 TO SEEK EARLY AGREEMENT ON TEXTS
ESTABLISHING HARIRI TRIBUNAL

REF: A. USUN 2046
[1](#)B. STATE 166376
[1](#)C. USUN 1366

[1](#)1. BEGIN SUMMARY: Secretary-General Annan met with the P-5 ambassadors on November 1, appealing to the P-5 to show flexibility and reach agreement within the next few days on the draft GOL/UN agreement and accompanying statute to establish a tribunal to try those responsible for the assassination of former Lebanese Prime Minister Rafiq Hariri. The meeting was clearly designed to press the Russians to withdraw their objections to the draft texts. Annan stressed the tenuous political situation in Lebanon and said Lebanese Prime Minister Siniora and the Lebanese want the UN to proceed as quickly as possible in concluding the two texts, which would lay the legal foundations for establishing the tribunal. Several P-5 ambassadors agreed that the P-5 should reach agreement in the next few days, but Russian Deputy PermRep Rogachev said Russia did not want to compromise quality. At the end of the meeting, Ambassador Bolton suggested the P-5 meet to find a way forward. END SUMMARY.

[1](#)2. Ambassador Bolton represented USUN at the Secretary-General's November 1 meeting; all other P-5

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ambassadors attended, except for Russian PermRep Churkin, who is away from New York. (Junior DPR Rogachev represented Russia.) UN Legal Counsel Nicolas Michel and Daphna Shraga and Markus Pellek of the Office of Legal Affairs (OLA) also attended.

[1](#)3. Annan opened the November 1 meeting by expressing concern about emerging divisions in the Lebanese government and then summarizing key objections the Russians have raised to the texts that OLA drafted and circulated to the P-5, Japan, and Qatar on October 19. Annan said the Secretariat wants to submit the texts for the Council's approval but does not want to do so if the Council remains divided. He asked the P-5 to provide final reactions to the Secretariat within one or two days.

[1](#)4. Annan then summarized Russia's objections and concerns. Russia has objected to the provision of the statute permitting trials in absentia and the provision permitting appointment - not Security Council election - of judges and prosecutors. Russia also seeks to amend the statute to terminate the tribunal automatically after three years. Russia also has questioned the use of the word "terrorist" in the statute to characterize the attacks over which the tribunal would exercise jurisdiction, the applicability of international law to the tribunal, the provision concerning individual criminal responsibility, and the reference in the

statute that permits the tribunal to draw on the jurisprudence of international criminal tribunals.

¶5. UK PermRep Jones-Parry expressed concern that the draft statute and agreement do not include a provision to strip immunity of Lebanese and third-party officials, as the statute establishing the Special Court for Sierra Leone does. Michel said a provision to strip the immunity of Lebanese officials would violate Lebanon's constitution, while a bilateral agreement would not be sufficient to eliminate the immunities of third-country officials.

¶6. Russian DPR Rogachev said Russia shares the view that the situation in Lebanon dictates "some urgency," but cautioned that speed should not take priority over the need to ensure the quality of the tribunal. He argued that the trial itself should be "very fair" and "developed in accordance with the highest standards," saying that the draft text in some places set out "minimal standards." He then said Russia's concerns are legal, not political. Specifically, he said Russia was "surprised" to see that non-governmental organizations and interested individuals could present the names of judges for the Secretary-General to appoint. Second, he said the defense should have the same privileges and immunities as the prosecution. He concluded by saying the texts should be concluded in "a matter of days not weeks."

¶7. Annan and Michel then addressed Russia's comments. First, Michel said OLA has consulted carefully with all of the P-5 to ensure that the texts reflect P-5 concerns and consulted with international judges to be sure the texts reflect international standards. Michel also questioned Russia's claim that the remaining issues are only legal in nature, noting that the key question of whether the tribunal should exercise jurisdiction over the Hariri attack only over other attacks is a policy - not a legal - question.

¶8. Michel explained that OLA had revised the texts last week to try to address Russia's concerns, sharing the revisions with Russia only. Among other things, he said OLA redrafted Article 1 of the draft statute (concerning subject-matter jurisdiction) to address Russia's concerns. The revision contained one sentence stating that the tribunal has jurisdiction over the Hariri attack. The second provision said if three conditions were met, then some of the other 14 attacks might also be covered. Specifically, the attacks must be related to the Hariri attack, of a similar nature, and of a similar gravity, he says. Because Russia had not accepted OLA revisions, however, Michel clarified that OLA had retracted them and would not share them with others. The texts OLA circulated to the P-5 on October 19 would remain the working drafts.

¶9. Michel then responded directly to some of Russia's other objections. He said OLA modeled the provision concerning appointment of judges on the mechanism by which judges are appointed to the Cambodia tribunal. For that tribunal, two independent judges participate along with representatives of the Secretariat in a selections panel, and all participants have considered that process to be effective.

¶10. Concerning Russia's concerns about the provision permitting trials in absentia, Michel said Lebanese law permits them and the draft statute permits these trials if a defendant is represented by counsel, something the European Court of Human Rights has established as a condition to protect defendants' human rights. Michel continued that four of Russia's other objections relate to the international character of the court, stressing that OLA thinks international elements must be a part of the statute of the tribunal. Finally, on the issue of whether the tribunal should terminate automatically, Michel thought OLA could find language to address Russia's concern that the tribunal should not continue indefinitely, while ensuring that an arbitrary decisions of one of the parties would not force it to stop working.

¶11. French PermRep de La Sabliere pressed Rogachev on whether Russia could accept OLA's new proposal on the scope of jurisdiction. Rogachev said Russia's "precondition" is that attacks other than the one on Hariri must be related to the Hariri attack if the tribunal is to exercise jurisdiction over them. The mere fact that suicide bombers perpetrated six of the other attacks does not establish a relationship, he argued, saying that a reference to the other attacks in one of Serge Brammertz's reports is not sufficient to establish a relationship. The notion of a "relation" should be established according to criminal law principles, he argued. Michel responded that the revised draft article uses the word "if," showing that the issue of relationship has not been prejudged. Annan agreed, saying the draft statute is the key text - not a paragraph in a Brammertz report to the Council.

¶12. Ambassador Bolton sought clarification on whether Brammertz agrees with the UN's desire to move quickly to establish the tribunal. Michel said he has spoken with Brammertz on a regular basis and Brammertz has not objected, and Annan agreed to secure written confirmation from Brammertz. Michel also clarified that the UN does not intend to appoint judges and create a working tribunal immediately after the texts are concluded. Instead, the UN wants to ensure that the legal bases for the tribunal are clear, allowing Brammertz to ensure that his investigation is conducted consistent with the rules and procedures of the tribunal. In practice, it would take months, if not a year, to bring the tribunal into operation because the UN would have to conduct an assessment mission, identify a location, and secure funding, among other things.

¶13. At the end of the meeting, Ambassador Bolton stressed that all parties want to move quickly. He then suggested that the P-5 ambassadors should meet to move the process.
BOLTON